IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 1518 OF 1993

Kalu R. Shahane .Petitioner

Vs.

Manjibhai P. Batliwala . ... Respondent

Mr. S. S. Kulkarni, Advocate for the Petitioner.

Mr. S. M. Gorwadkar for Respondent.

CORAM : D. G. DESHPANDE, J.

DATE : OCTOBER 5, 2006.

P.C.

. Heard the advocate for the Petitioner and the Respondent. Petitioner is tenant of Respondent's premises under the Rent Act. A decree of ejectment has been passed against him. The trial Court decreed the suit. Appeal also came to be dismissed, and therefore this petition. While the appeal was pending, the tenant / Petitioner has filed certain documents alongwith the Petition. The Petitioner has filed certain documents Exh.C, which is a notice issued to him, with reference to bill under Sec.128 of Maharashtra Slum Area (Improvement, Clearance and Development) Act 1971, and 2-3 notices of this type. Original of these notices are in possession of advocate for Petitioner. On the basis of these documents, Petitioner contended that if the suit property comes under the provisions of the Slum Act, as referred to above, then the suit is not

maintainable.

2. Admittedly this issue was not raised by the Petitioner either before the trial Court or before the appellate Court. The documents filed with the petition Exh.C and other documents on record referred to above, making out a case of the Petitioner regarding applicability of the Slum Act, may be true. This is a matter decided on the evidence to be adduced by both the parties. The issue raised by the Petitioner, though raised by him in the petitioner for the first time, goes to the root of the matter, but it is also true that the Respondent landlord who has succeeded in both the Courts is waiting to get possession of the property. Since filing of the suit from 1983, he will have to wait again for a minimum period of ten years, and therefore, it is necessary to compensate him, by awarding costs upon the Petitioner.

3. When this was suggested, advocate for the Petitioner suggested that the Court may award reasonable costs to Petitioner and may put Petitioner any terms and conditions. In view of this statement, matter is required to be remanded to the trial Court for enabling both the Petitioner and the Respondent to raise the issue in pleading firstly i.e. in the

written statement including the defence, which is now raised about applicability of provisions of Slums Act 1971. Then Court will have to frame issue and give opportunity to parties to lead evidence and then decide the issue. Therefore, following order.

ORDER

1. The order of the appellate Court is set aside.

2. The matter is sent back to the trial Court for deciding issue of applicability of Maharashtra Slums Act, 1971, upon the Petitioner depositing Rs.10,000/- in the trial Court, within four weeks from today. The Petitioner to deposit Rs.10,000/- on or bnefore 16th November, 2006 before the trial Court. If the amount is so deposited, then trial Court will permit the Petitioner to amend the written statement and plaintiff/ Respondent will be allowed to amend the plaint consequently. Then issue with reference to applicability be framed and parties be allowed to lead evidence. The trial Court will decide that issue in any case not less than four months, from the date of first appearance of the parties and send the finding directly to this Court. If the amount of costs is not so deposited within stipulated period, the opportunity

to the Petitioner will stand forfeited and the petition will be heard on merits on remaining issues.

3. The record and proceeding, if any called from the trial Court, the same be sent to the trial Court.

[D. G. DESHPANDE, J.]